IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated.: 29.08.2007

CORAM:

THE HONOURABLE MR. JUSTICE K.MOHAN RAM

Second Appeal No.1271 of 2006 & M.P.No. 2 of 2006

Tamil Nadu Electricity Board,
by its Junior Engineer O & M,
Melpatti Section,
Melpatti and Post, Gudiyattam Taluk. .. Appellant/Appellant/
Defendant

-Vs-

1.Mohideen Sahib
2.Abdul Rahaman .. Respondents/Respondents/
Plaintiffs

APPEAL filed under Section 100 of Code of Civil Procedure against the judgment and decree, dated 27.01.2006, made in A.S.No.23 of 2004 on the file of the Subordinate Court, Gudiyattam, confirming the judgment and decree dated 21.11.2003 made in O.S.No.631 of 1999 on the file of the District Munsif Court, Gudiyattam.

For Appellant : Mr.N.Muthuswami

For Respondents : Mr.K.A.Ravindran

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J U D G M E N T

The unsuccessful defendant in O.S.No.631 of 1999 on the file of the District Munsif Court, Gudiyattam, has filed the above second appeal.

2. For the sake of convenience, the parties are referred to as per their ranking in the suit.

3. The case of the plaintiffs is as follows:-

The 1st plaintiff had set up flour mill and obtained electricity service connection bearing No.120 from the defendant Electricity Board; in 1996 the 1st plaintiff's unit was recognised as a tiny unit by the Government of Tamilnadu and certificate to that effect was issued; the tariff to the 1st plaintiff's service connection was classified under Tariff III-A; the second plaintiff started a business

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of hulling paddy, soapanut power and decorticating of groundnut in October 1998 and the same was recognised as tiny unit and the second plaintiff got the electricity service connection No.193 which was classified under Tariff III-A; while so according to the plaintiffs the defendant without issuing any notice and conducting any enquiry changed the tariff from III-A to tariff III-B and such change in tariff effected by the defendant is against the principles of natural justice and hence filed the suit for declaration and for consequential permanent injunction.

4. The defendant contested the suit inter alia contending as follows:

The plaintiffs were allowed to enjoy the said service connection under Tariff III-A; as per G.O.Ms.No.29, dated 31.01.1995, the plaintiffs units were treated as tiny units and therefore classification of the unit was made under tariff III-A but the correct tariff applicable is III-B; the entry in the green card which is in the custody of TNEB and in the white card which is in the custody of the plaintiffs was made on 16.07.1999 and after the tariff was changed the plaintiffs were called upon to pay charges under tariff III-B. The defendant Board is acting only as per the curricular issued by the Government and the proceedings issued by the TNEB; it is contended that previous notice or enquiry is not required for change in the tariff.

5. After framing appropriate issues, the suit was taken up for trial and during trial on the side of the plaintiffs, the 2nd plaintiff was examined as P.W.1 and Exhibits A1 to A4 were marked. On the side of the defendant one witness was examined as D.W.1 and Exhibit B1 to B4 were marked. The Trial Court on a careful consideration of the oral and documentary evidence adduced in the case, held that the change of tariff by the defendant has civil consequences and therefore the change of tariff without any notice to the plaintiffs violates the principles of natural justice and accordingly decreed the suit for permanent injunction. Being aggrieved by that the defendant filed an appeal in A.S.No.23 of 2004, on the file of the Subordinate Court, Gudiyattam. The lower appellate court also on an independent consideration of the evidence on record and the reasoning of the trial court agreed with the findings of the trial court and dismissed the appeal. Being aggrieved by that the defendant is before this Court in the above second appeal.

6. Heard Mr.N.Muthuswami learned counsel for the appellant and Mr.K.A.Ravindran learned counsel for the respondents.

7. The learned counsel appearing for the appellant submitted that both the courts below have not properly considered Exs.B1 and B2, the Government orders and the relevant circulars issued by the Government.

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8. The learned counsel for the appellant further submitted that the issuance of Exs.A1 and A2 certificates certifying the units run by the plaintiffs as tiny industrial unit alone will not enable the plaintiffs to get their service connection classified under Tariff III-A. The learned counsel further submitted that unless and until the units run by the plaintiffs come under any one of the categories enumerated under Low Tension tariff III-A, the plaintiffs cannot claim to be charged under Tariff III-A. The learned counsel further submitted that under Low Tension tariff III-B the following categories are included namely,

> "Coffee grinding, Ice factory, Body building unit, Saw mill, Rice mill, Flour mill, Prawn farming, Poultry farming, Battery charging unit and industries not covered under Low ension Tariff III"

and therefore the learned counsel submitted that when admittedly the plaintiff's unit is a flour mill and flour mill is included in Tariff III-B, the same will come under Tariff III-B. The learned counsel further submitted that though under the Low Tension tariff III-A tiny units are included, the plaintiffs are not entitled to be charged under Low Tension tariff III-A since the plaintiffs are running flour mill. The learned counsel further submitted that since the change in tariff has been entered in the green card and white card and the white card is always with the plaintiffs it should be taken that they had notice about the change in tariff. Alternatively, the learned counsel submitted that by non-issuance of notice no prejudice what-so-ever has been caused to the plaintiffs because the change in tariff has to be considered only in the light of the relevant circulars issued by the Government and the proceedings issued by the Electricity Board.

9. Per contra, the learned counsel for the respondents submitted that though the change in tariff is caused in the white card which is in the custody of the plaintiffs no specific notice informing the plaintiffs that the tariff is going to be changed from tariff III-A to III-B has been issued and prejudice has been caused to the respondents by non issuance of notice.

10. I have carefully considered the submission made on either side and the materials available on record and the judgments of the courts below.

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11. In the memorandum of grounds of the second appeal the following substantial question of law has been framed:-

> "Whether the courts below have committed an error of law in decreeing the suit filed by the plaintiffs with reference to classification of the category of

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consumers under Low Tension tariff III-A to Low Tension tariff III-B as found under G.O.Ms.No.17, Energy Department dated 14.02.1997 under the provisions of The Tamil Nadu Revision of Tariff on Supply of Electrical Energy Act, 1978 (Act No.1 of 1979)?

12. The tariff charges payable to the Tamil Nadu Electricity Board by any consumer on the energy supplied by the Board is specified in the schedule to the Tamil Nadu Revision of Tariff on Supply of Electrical Energy Act, 1978 (herein after referred to as the 'Act'). Under Section 4 of the Act, the State Government is empowered to amend the schedule to the Act. In exercise of the power under Section 4 of the above Act, the State Government from time to time issues various statutory orders and the same are published in the Tamil Nadu Government Gazette. By issuing such statutory orders, the schedule to the Act is being amended from time to time. Ex.B1 is one such Government Order issued in G.O.Ms.No.29 dated 31.09.1995.

13. The courts below ought to have considered the case of the plaintiffs in the light of Ex.B1 and decided the question as to whether the plaintiffs service connections will fall under tariff No.III-A or tariff No.III-B. But both the courts below have not done that. If the classification of the service connection of the plaintiffs has been made strictly in accordance with Ex.B1 then no exception can be taken to the change of classification of the plaintiffs service connections from category III-A to III-B. Admittedly, the plaintiffs are running flour mill and the service connection has been obtained by the plaintiff only to run the flour mill. There is also no dispute that the units run by the plaintiffs have been certified as tiny units as evidenced from Exs.A1 and A2 which have been issued by the District Industries Centre. Since the District Industries Centre has issued Exs.A1 and A2 certificates certifying the units namely flour mills run by the plaintiffs as tiny unit, the plaintiffs are claiming that their service connections ought to be classified under tariff III-A.

14. As seen from Ex.B1, Low Tension tariff III-A is applicable to cottage and tiny industries, small gem cutting units where cutting operation is done with or without power, power looms and sericulture provided that the connected load shed not exceed 10 Horse Power. Low Tension Tariff III-B is applicable to the following categories namely Coffee grinding, Ice factory, Body building unit, Saw mill, Rice mill, Flour mill, Prawn farming, Poultry farming, Battery charging unit and industries not covered under Low Tension Tariff III. A reading of the above said two tariff classifications makes it clear that cottage and tiny units will fall under Low Tension tariff III-A but if the tiny units happens to be a flour mill, which is enumerated under Low Tension III-B, then such a tiny unit cannot be classified as coming under Low Tension tariff III-A. Since flour mill has been

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specifically included under Low Tension tariff III-B even if it has been classified as tiny unit, it cannot come under Low Tension tariff III-A. Only tiny units of any other description except the units covered by Low Tension tariff III-B will come under Low Tension tariff III-A. Since flour mill has been enumerated under Low Tension Tariff III-B, the claim of the plaintiffs that as the flour mill run by the plaintiffs has been certified as tiny unit by the District Industries Center, the same should be classified only under Low Tension tariff III-A cannot be accepted.

15. Both the courts below have miserably failed to consider the case of the plaintiffs in the light of Ex.B1 which is a statutory order issued by the Government in exercise of its power under Section 4 of the Act.

16. The contentions of the learned counsel for the respondents that the change of classification from tariff III-A to tariff III-B without giving any notice or opportunity of hearing to the respondents is bad in law is also not sustainable. The change in tariff is noted in the green card as well as in the white card; while the green card is kept by the appellant, the white card is always be with the respondents. From the entry made in the white card the respondents would have come to know about the change in tariff and in fact they had come to know about the same. The respondents ought to have challenged the same by preferring a statutory appeal but the respondents have not done so. Admittedly, no separate notice has been issued to the respondents by the appellant before effecting change in tariff and it may amount to violation of the principles of natural justice. Mere violation of the principles of natural justice in the absence of any prejudice being caused to the respondents will not invalidate the change in tariff effected by the appellant. Even if a notice has been issued prior to effecting change in the tariff, since admittedly the plaintiffs are running a flour mill, the plaintiffs could not have given any acceptable explanation to bring their service connection within Tariff III-A. Even if an opportunity is given to the respondents that also will not serve any useful purpose. Since they will be putting forth the very same contentions that are being urged before this Court. As pointed out above the only contention of the respondents is that since the plaintiffs units have been certified as tiny unit by the District Industries Center as evidenced from Exs.A1 to A2 they should be included only in tariff III-A and not under tariff III-B.

17. This court has also held that simply because the plaintiffs have been certified as tiny units by the District Industries Center, that alone will not clothe the respondents with any right to include their service connection under tariff III-A. Therefore the reasoning of the Courts below that as no notice was issued for effecting change in tariff there is violation of the principles of natural justice and

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therefore the plaintiffs / respondents are entitled to get a decree of permanent injunction is unsustainable and accordingly the substantial question of law is answered in favour of the appellant and against the respondents and the second appeal is allowed and the judgment and decree of the courts below are set aside. However, there will be no order as to costs. Consequently, the connected M.P. is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

kk

To

1.The Subordinate Court, Gudiyattam.
2.The District Munsif Court, Gudiyattam.

+1cc to Mr.K.A.Ravindran, Advocate Sr 54323
+1cc to Mr.N.Muthuswami, Advocate Sr 54306

JSK (CO)
km/17.9.

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and M.P.No.2 of 2006

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